

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

RYAN BRESLOW, ALEX FINE, and JON
GORDON,

Plaintiffs,

v.

MARK PHILLIPS and BENJAMIN REED,

Defendants.

MOVEMENTDAO and MARK PHILLIPS,

Counterclaim-

Plaintiffs

v.

RYAN BRESLOW, ALEX FINE, and JON
GORDON,

Counterclaim-Defendants

Action No.: 23-cv-20727-ALTMAN/Reid

Honorable Roy K. Altman

**COUNTERCLAIM-DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE
DOCUMENTS UNDER SEAL AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to Local Rule 5.4, Plaintiffs and Counterclaim-Defendants Ryan Breslow, Alex Fine, and Jon Gordon (collectively, “Counterclaim-Defendants”), by and through undersigned counsel, hereby move the Court for an order permitting Counterclaim-Defendants to file under seal the following materials (1) Counterclaim-Defendants’ Motion to Dismiss Counterclaim and (2) Exhibit No. 1 of the Declaration of Christopher T. Berg dated June 30, 2023 (“Exhibit No. 1”), which was previously admitted into evidence at the Preliminary Injunction Hearing as Defendants’ Exhibit No. 367 and filed under seal pursuant to Dkt No. 115.

I. INTRODUCTION

The Court previously granted Counterclaim-Defendants leave to file Exhibit No. 1 under seal in connection with its filing of admitted exhibits from the preliminary injunction hearing. *See* Dkt. No. 115. That document was subsequently filed under seal through the ECF system on June 21, 2023. Now, Plaintiffs seek leave to again file this document under seal in connection with its concurrently filed Motion to Dismiss. For the same reasons set forth in Counterclaim-Defendants’ prior motion, Exhibit No. 1 should be filed under seal.

Additionally, Counterclaim-Defendants’ Motion to Dismiss includes references to, and excerpts from, Exhibit No. 1. In order to preserve the confidentiality of Exhibit No. 1, the unredacted version of Counterclaim-Defendants’ Motion to Dismiss must also be filed under seal.

For these reasons, Counterclaim-Defendants respectfully request the Court permit them to file its Motion to Dismiss and Exhibit No. 1 under seal.

II. LEGAL STANDARD

While court records are generally subject to the common law right of access, “the right to inspect and copy judicial records is not absolute.” *Nixon v. Warner Comm., Inc.*, 435 U.S. 589,

597 (1978). Courts may allow documents to be filed under seal upon a showing of “good cause,” which includes “balanc[ing] the asserted right of access against the other party’s interest in keeping the information confidential.” *Romero v. Drummond Co.*, 480 F.3d 1234, 1246 (11th Cir. 2007); *see Jankula v. Carnival Corp.*, No. 18-CV-24670, 2019 WL 8051714, at *1 (S.D. Fla. July 30, 2019).

III. ARGUMENT

The Court should grant leave for Counterclaim-Defendants to file under seal their Motion to Dismiss and Exhibit No. 1. Exhibit No. 1 is confidential and has been treated as such by the parties. It has already been sealed by the Court. Since then, nothing has changed that would necessitate the public, unredacted filing of this document.

Additionally, Counterclaim-Defendants’ Motion to Dismiss refers to, and excerpts from, Exhibit No. 1. To preserve the confidentiality and sealed nature of this document, the Motion to Dismiss should also be placed under seal. Counterclaim-Defendants will publicly file a redacted version of the Motion.

IV. CONCLUSION

For the reasons set forth in this Memorandum, Counterclaim-Defendants respectfully request that the Court issue an Order permitting Counterclaim-Defendants to file under seal (1) their Motion to Dismiss; and (2) Exhibit No. 1.

COMPLIANCE WITH LOCAL RULE 7.1(a)(3)

On June 26, 2023, counsel for Counterclaim-Defendants conferred with Counterclaim-Plaintiffs’ counsel. Counterclaim-Plaintiffs do not oppose the relief sought by this Motion.

Dated: June 29, 2023

/s/Jamie L. Katz

John K. Shubin, Esq.
Dylan M. Helfand, Esq.
Jamie L. Katz, Esq.
SHUBIN & BASS, P.A.
150 W Flagler Street, Suite 1420
Miami, FL 33130
Tel.: (305) 381-6060
Fax: (305) 381-9457
Email: jshubin@shubinbass.com
jkatz@shubinbass.com
dhelfand@shubinbass.com

/s/ Benjamin J. Kussman

Christopher T. Berg (*pro hac vice*)
Benjamin J. Kussman (*pro hac vice*)
Andrew Iglesias (*pro hac vice*)
ELLIS GEORGE CIPOLLONE
O'BRIEN ANNAGUEY LLP
2121 Avenue of the Stars, 30th Floor
Los Angeles, California 90067
(310) 274-7100
Email: cberg@egcfirm.com
bkussman@egcfirm.com
aiglesias@egcfirm.com

*Attorneys for Plaintiffs and Counterclaim-
Defendants Ryan Breslow, Alex Fine, And Jon
Gordon*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by the Court's CM/ECF system on June 29, 2023 on all counsel of record.

/s/ Jamie L. Katz
Jamie L. Katz

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

RYAN BRESLOW, ALEX FINE, and JON GORDON,

Plaintiffs,

v.

MARK PHILLIPS and BENJAMIN REED,

Defendants.

MOVEMENTDAO and MARK PHILLIPS,

Counterclaim-

Plaintiffs

v.

RYAN BRESLOW, ALEX FINE, and JON GORDON,

Counterclaim-Defendants

Action No.: 23-cv-20727-ALTMAN/Reid

Honorable Roy K. Altman

**[PROPOSED] ORDER GRANTING MOTION FOR
LEAVE TO FILE UNDER SEAL**

THIS CAUSE is before the Court on Plaintiffs and Counterclaim-Defendants Ryan Breslow, Alex Fine, and Jon Gordon's (collectively, "Counterclaim-Defendants") Motion For Leave To File Documents Under Seal (the "Motion"), served under Certificate of Service dated June 29, 2023. The Court has reviewed the Motion and is otherwise fully advised in the premises.

Accordingly, it is ORDERED that Counterclaim-Defendants' Motion For Leave To File Under Seal is hereby GRANTED. Counterclaim-Defendants may file under seal (1) their Motion to Dismiss; and (2) Exhibit No. 1 of the Declaration of Christopher T. Berg dated June 30, 2023.

DONE AND ORDERED in Chambers at _____, Florida this ____ day of June, 2023.

Dated:

United States District Court Judge